**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

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| **KATHY S. GOODALE** | ) | |
| Claimant | ) | |
| VS. | ) | |
| | ) | Docket No. 1,024,190 |
| **FEDERAL EXPRESS CORPORATION** | ) | |
| Respondent | ) | |
| Self-Insured | ) | |

## ORDER

Respondent appeals the December 1, 2005 preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded benefits after the Administrative Law Judge (ALJ) determined that claimant had proven that she suffered injury to her right upper extremity arising out of and in the course of her employment with respondent and that she had provided timely notice of the injury.

## ISSUES

1. Did claimant suffer accidental injury or occupational disease arising out of and in the course of her employment for respondent?

2. Did claimant provide timely notice of the alleged accident?

3. Did claimant suffer an intervening accident which would relieve respondent of the responsibility of paying for the requested benefits?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the ALJ should be reversed.

Claimant began working for respondent as a box handler in February of 2004. Claimant's job guaranteed that she would be paid 17.5 hours a week whether she worked that much or worked less.

Claimant testified she first experienced symptoms in her right upper extremity when she awoke one morning with pain in her right wrist, which she described as excruciating.

The pain went into her hand and it hurt her all the time. Regardless of what activities claimant was involved in, her hand would hurt. It did not matter if she was bathing her children, opening a trunk or anything that required her to twist her wrist. This also included work activities while employed with respondent.

Claimant testified she discussed her wrist problems with co-workers Tasha and Marti, and also discussed her wrist problems with a ramp agent in training named Edward Robinson. Claimant thought Mr. Robinson was her supervisor, although Mr. Robinson, who testified in this matter, denied having any supervisory responsibilities or authority over claimant or any of the other handlers. Claimant testified that when she talked to Mr. Robinson, it was because he was wearing a splint and advised claimant that he suffered from tendinitis. Claimant did tell Mr. Robinson that she had been diagnosed with tendinitis.

Claimant also testified she talked to John Renecker, who was described by claimant as being her boss. Claimant acknowledged that the conversation with Mr. Renecker was casual. On cross-examination, claimant also acknowledged that during her discussions with Mr. Renecker, she never advised him that she suffered a work-related injury and at no time requested that Mr. Renecker or any other respondent representative provide her medical care. Respondent alleges the first time it was provided notice of a work-related accident was upon receipt of a letter from claimant's attorney on July 19, 2005.

Claimant first sought medical treatment with Tobie R. Morrow, D.O., her family doctor. When claimant saw Dr. Morrow on April 13, 2005, she advised Dr. Morrow that she worked at a job which required repetitive activities, but went on to advise Dr. Morrow that she "cannot relate any known injuries to work."[1] Also contained in Dr. Morrow's office notes were instructions that claimant wear a wrist splint at all times. The notes went on to state that if claimant could not do the lifting, the doctor would "mail her a work restriction note." However, claimant acknowledged that she never wore her brace at work.[2]

Claimant was referred by Dr. Morrow to Steven Leonard, D.C., for chiropractic care. In the chiropractic notes of April 19, 2005, claimant's employer was listed as FedEx. The history form also asked the question whether claimant's condition arose out of her employment, and it was answered with a question mark. The notes went on to state that claimant "woke up with it one morning – not really sure", following the question as to how claimant's condition occurred.[3]

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[1] P.H. Trans., Cl. Ex. 1 (Dr. Morrow's office notes of Apr. 13, 2005).

[2] P.H. Trans. at 23.

[3] P.H. Trans., Cl. Ex. 2 at 5.

On April 21, 2005, claimant presented Mr. Renecker a handwritten notice of termination, advising that she would be terminating her employment in two weeks. The note makes no mention of any work-related problems.

After leaving respondent's employment, claimant continued as a freelance writer and did occasional typing, as well as taking care of housework and two children, ages 9 and 3.

Claimant testified that sometime after leaving respondent's employment, she was tucking a shirt into her pants one day when her wrist popped. She again experienced excruciating pain and felt that she had gone back to square one with the wrist. It was at that point that claimant decided to file a workers compensation claim. Claimant's claim was then filed on July 19, 2005, for a series of accidents through May 6, 2005, her last day worked with respondent.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.[4]

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case.[5]

In this instance, the Board finds claimant has failed to prove that she suffered accidental injury out of and in the course of her employment. While it is acknowledged that claimant suffered symptoms while employed, it is also clear from this record that claimant's initial difficulties occurred at a location away from her employment. Claimant simply woke up one morning with right wrist pain. Claimant also testified that every activity she performed, including the normal household responsibilities, aggravated her condition.

When claimant sought medical treatment both with her family doctor and with a chiropractor, the medical records regarding that treatment do not indicate that claimant discussed or provided a history to these doctors of a work-related accident. In fact, the "Soap Notes" of Dr. Leonard[6] indicate on April 22, 2005, claimant was feeling a lot better. On April 25, 2005, claimant felt better or different, indicating it was more in the elbow. On May 2, 2005, claimant was doing better still. Finally, the May 6, 2005 note indicated not much better today. May 6, 2005, was claimant's last day of employment with respondent. Claimant went on to testify that her condition had improved until one day at home when

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[4] K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

[5] *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984).

[6] Cl. Ex. 2 at 2.

she was tucking a shirt into her pants and her wrist popped and she again felt the excruciating pain.

From this record, the Board cannot find that claimant satisfied her burden of proving that she suffered accidental injury arising out of and in the course of her employment with this respondent. The Board, therefore, finds that the Order of the ALJ granting claimant benefits for the injuries alleged through May 6, 2005, should be, and is hereby, reversed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated December 1, 2005, should be, and is hereby, reversed.

**IT IS SO ORDERED.**

Dated this ____ day of February, 2006.

BOARD MEMBER

c: Terry J. Torline, Attorney for Claimant
Steven J. Quinn, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director